UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 17-cr-20740
Hon. Gershwin A. Drain

(D-7) CARAUN KEY,
(D-9) TYREE WILLIAMS,

Defendants.
_____/

ORDER DENYING DEFENDANT TYREE WILLIAMS' AND DEFENDANT CARAUN KEY'S MOTION TO SUPPRESS ARREST VAN RECORDINGS [#451, #455] AND CANCELING HEARING

I. INTRODUCTION

Presently before the Court is Defendant Tyree Williams' Motion to Suppress Illegally Obtained Evidence, filed on March 21, 2019. Also, before the Court is Defendant Caraun Key's Motion to Suppress Arrest Van Audio/Video Recordings, filed on March 22, 2019. The Government filed a Combined Response in Opposition on April 9, 2019. Defendant Key filed a Reply brief in support of his present motion on April 17, 2019. Upon review of the parties' submissions, the Court finds that oral argument will not aid in the disposition of these matters.

Accordingly, the Court will cancel the hearing and resolve the present motions on the briefs. *See* E.D. Mich. L. Cr. R. 12.1(a); E.D. Mich. L.R. 7.1(f)(2).

II. BACKGROUND

Defendants have been charged along with eleven others in a Third Superseding Indictment with RICO conspiracy. On November 8, 2017, the Defendants and some of their Co-Defendants were arrested in the early morning. They were provided *Miranda* warnings, handcuffed and placed inside a van that was prominently marked with "police" near the side and rear doors of the vehicle. The interior of the van is a single open passenger space with seating for multiple persons. There is a door with a plexiglass window separating the passenger compartment from the front driver area. While awaiting transport, Defendants were unaware that their statements to each other were being recorded by the police with both audio and video equipment. The Defendants expressed concern that they were being recorded, however they continued to make statements to one another.

III. LAW & ANALYSIS

Defendants seek to exclude the statements made in the police van because they did not give their consent to the recordings and they exhibited an expectation of privacy in the statements made to their Co-Defendants. Contrary to Defendants' argument, they did not have a reasonable expectation of privacy in the police van.

The central question when a defendant alleges a Fourth Amendment violation is whether the defendant had "a legitimate expectation of privacy in the place searched or the thing seized." *United States v. King*, 227 F.3d 732, 743 (6th Cir. 2000). The Sixth Circuit has yet to rule on the issue of whether a defendant has a legitimate expectation of privacy in the back seat of a police vehicle. However, "seven circuits have done so and all have concluded that there is no reasonable expectation of privacy in the back seat of a police cruiser." *Jarnigan v. Johnson*, No. 2:12-cv-205-HSM-WBC, 2015 U.S. Dist. LEXIS 109701, *16 (E.D. Tenn. Aug. 17, 2015) (citing *United States v. Webster*, 775 F.3d 897, 903-04 (7th Cir.) cert. denied, 135 S.Ct. 2368, 192 L. Ed. 2d 158 (2015) (listing cases)).

While the Sixth Circuit has not addressed the issue before this Court, it is noteworthy that every district court in this Circuit to have addressed whether a defendant has a legitimate expectation of privacy in a police vehicle has answered the question in the negative. *See United States v. Reese*, No. 1:09 CR 00145, 2010 U.S. Dist. LEXIWS 63119, *15-16 (N.D. Ohio Jun. 25, 2010) (concluding that recording defendants' conversation in the back of a police van did not offend the Constitution because the defendants could have no reasonable expectation of privacy "merely because they were alone in the van, handcuffed and awaiting transportation to the" precinct); *United States v. Jones*, No. CR-1-06-073, 2006 U.S. Dist. LEXIS 63578, *15-16 (S.D. Ohio Sept. 6, 2006) (holding that the

defendant had no reasonable expectation of privacy in the back of a police cruiser); *Jarnigan*, 2015 U.S. Dist. LEXIS 109701, at *16 (same).

In *United States v. Paxton*, 848 F.3d 803, 813 (7th Cir. 2017), the Seventh Circuit held that "because the defendants lacked an objectively reasonable expectation of privacy when placed into the marked police van, the interception and recording of their conversations did not constitute a search for purposes of their Fourth Amendment rights or an unauthorized interception for purposes of Title III."

In *Paxton*, the ATF arrested five defendants and placed them into a clearly marked police transport van. 848 F.3d at 805. None of the defendants had been given *Miranda* warnings prior to being placed in the van. *Id.* at 806. All of the defendants were handcuffed. *Id.* at 805-06. While in the van, the defendants conversed quietly. *Id*. at 806. Unbeknownst to them, two recording devices had been hidden in the rear compartment of the van so as to capture their conversation. *Id*. One defendant remarked that the van was "probably bugged," but the defendants continued to converse and make incriminating statements. *Id*.

The *Paxton* court noted that in "the three-plus decades preceding . . . this case, federal and state courts had concluded with apparent unanimity that a person has no objectively reasonable expectation of privacy while seated in a marked patrol car." 848 F.3d at 808 (citing, among other cases, *United States v. Dunbar*,

553 F.3d 48, 57 (1st Cir. 2009); *United States v. Turner*, 209 F.3d 1198, 1200-01 (10th Cir. 2000); *United States v. Clark*, 22 F.3d 799, 801-02 (8th Cir. 1994); *United States v. McKinnon*, 985 F.2d 525, 527 (11th Cir. 1993); *United States v. Fridie*, 442 F. App'x 839, 841 (4th Cir. 2011) (per curiam); *United States v. Sallee*, No. 91 CR 20006-19, 1991 U.S. Dist. LEXIS 20553, * (N.D. Ill. Oct. 24, 1991) (collecting state cases); *United States v. Carter*, 117 F.3d 1418 (table), 1997 U.S. App. LEXIS 18123 (5th Cir. Jun. 5, 1997)).

The *Paxton* court held that the defendants had no reasonable expectation of privacy "given the inescapable fact that [they had] been taken into custody and placed into a marked police vehicle for transport to a law enforcement facility[.]" *Paxton*, 848 F.3d at 811. The "police van was functioning (and was designed to function) as a mobile jail cell." *Id*. (citing *Clark*, 22 F.3d at 801-02; *McKinnon*, 985 F.2d at 527). "[G]iven the increasing presence of unobtrusive, if not invisible, audio and video surveillance in all manner of places, public and private, one wonders how much of a reminder a detainee needs that he might be under surveillance—particularly in a marked police vehicle—or that this might be so regardless of whether he can see any obvious signs of surveillance devices." *Id*. at 812. The *Paxton* court also concluded that law enforcement's legitimate reasons for monitoring detainees in the back of police vehicles supports the "conclusion that society is not prepared to recognize as reasonable whatever subjective

expectations of privacy the defendants may have harbored in their conversations within the van." *Id.* at 813.

Similar to the facts in *Paxton*, Defendants Key and Williams were arrested, handcuffed and placed in a marked police van with their Co-Defendants. One of the occupants in the back of the van commented that the police may be recording their conversation, but the Defendants continued to talk. Like the defendant in *Paxton*, Defendants Key and Williams could have no legitimate expectation of privacy when they had "been taken into custody and placed in a marked police vehicle for transport to a law enforcement facility[.]" *Paxton*, 848 F.3d at 811.

Additionally, even if the Defendants had not been given *Miranda* warnings, there was no interrogation in the van, thus the Fifth Amendment is not implicated here. *United States v. Collins*, 683 F.3d 697, 703 (6th Cir. 2012) ("'Volunteered statements of any kind are not barred by the Fifth Amendment and their admissibility is not affected' by the holding in *Miranda*.") (quoting *Miranda v. Arizona*, 384 U.S. 436, 478 (1966)); *United States v. Gossett*, 600 F. App'x 330, 335 (6th Cir. 2015) ("[T]he special procedural safeguards outlined in Miranda are required not where a suspect is simply taken into custody, but rather where a suspect in custody is subjected to interrogation."). Here, the only questioning came from the other Defendants.

The fact that Defendants were in a law enforcement vehicle when they volunteered these statements is of no consequence. *See United States v. Murphy*, 107 F.3d 1199, 1204-05 (6th Cir. 1997) (defendant's statements admissible even though she made them while in the back of a police vehicle and without *Miranda* warnings because they were voluntarily made in the absence of any questioning); *see also United States v. Thomas*, 381 F. App'x 495, 502 (6th Cir. 2010) ("Police may listen to volunteered statements, and need not interrupt a suspect who is volunteering information in order to deliver a *Miranda* warning.")

Lastly, the Court will reject the Defendants' request for an evidentiary hearing. The photographs and video recordings provide the Court with adequate information to decide the factual issues. Additionally, a "defendant is not entitled to an evidentiary hearing where his arguments are entirely legal in nature." *United States v. Knowledge*, 418 F. App'x 405, 408 (6th Cir. 2011).

III. CONCLUSION

For the reasons articulated above, Defendant Tyree Williams' Motion to Suppress Illegally Obtained Evidence [#451] is DENIED. Defendant Caraun Key's Motion to Suppress Arrest Van Audio/Video Recordings [#455] is DENIED.

SO ORDERED.

Dated: May 10, 2019

/s/Gershwin A. Drain
GERSHWIN A. DRAIN
United States District Judge

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on May 10, 2019, by electronic and/or ordinary mail.
/s/ Teresa McGovern
Deputy Clerk